



Report to the Auburn City Council

Action Item

Agenda Item No. **6**City Manager Approval

To: Mayor and City Council Members
From: Bernie Schroeder, Director of Public Works
Megan Siren, Administrative Analyst
Date: May 13, 2013
Subject: 2013 Placer County Air Pollution Control District Clean Air Grant Contract –
Roadway Markings and Signage for Bicycle Routes Project

The Issue

Shall the City sign and execute a Contract with the Placer County Air Pollution Control District for the Clean Air Grant for the Roadway Markings and Signage for Bicycle Routes Project.

Conclusion and Recommendation

Staff recommends that City Council by **RESOLUTION**, authorize the Director of Public Works to sign and execute the Clean Air Grant Contract No. CN0000756 with the Placer County Air Pollution Control District for the Roadway Markings and Signage for Bicycle Routes Project.

Background

The Public Works Department applied for the 2013 Clean Air Grant through the Placer County Air Pollution Control District (PCAPCD) for the Roadway Markings and Signage for Bicycle Routes Project. The project details include installing a minimum of 7 bicycle signs and 7 roadway markings on Lincoln Way, High St and Auburn Folsom Road in order to identify bicycle routes and encourage bicycling in Auburn. The City's Traffic Committee will review and finalize the locations of the installation of the roadway markings and signage.

The PCAPCD Board approved the grant application at their April Board meeting for funding in the amount of \$2,500. Staff estimated the total cost of the project to be \$3,000, including staff costs to install the markings and signs. The intent of the project is to promote and encourage bicycling within the City of Auburn.

Alternatives Available to Council; Implications of Alternatives

1. Proceed with Staff Recommendation
2. Do not proceed with staff recommendation

Fiscal Impact

The proposed 2013/2014 Fiscal year budget will incorporate the Roadway Markings and Signage for Bicycle Routes within the Transportation Fund (Fund 26).

Attachment: 2013 Clean Air Grant Contract

Agreement Number CN000756

**DESCRIPTION: ROADWAY MARKINGS AND SIGNAGE FOR BICYCLE ROUTES
IN THE CITY OF AUBURN**

This AGREEMENT is between the Placer County Air Pollution Control District (hereinafter "PCAPCD") and City of Auburn, a political subdivision of the state of California (hereinafter "CONTRACTOR").

RECITALS

WHEREAS, under AB 2766 and AB 923 (Health and Safety Code Section 44220 and 44225 *et. seq.*), the PCAPCD has levied a \$6.00 fee on motor vehicles registered within the PCAPCD; and

WHEREAS, the PCAPCD has received Air Quality Mitigation Funds to off-set the impact of new development in Placer County by reducing emissions, primarily ozone precursor emissions, from sources that are not required by law to reduce emissions; and

WHEREAS, pursuant to AB 2766, AB 923 and the APCD's Offsite Mitigation Program, the monies collected under these levies must be used to reduce air pollution from motor vehicles and other sources, and for related air quality planning, education, air monitoring, and technical studies necessary for the implementation of the California Clean Air Act; and

WHEREAS, CONTRACTOR has requested that the PCAPCD provide Clean Air Grant monies for the PROJECT(s) described in Exhibit A, subject to the terms and conditions set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has represented to the PCAPCD that CONTRACTOR has the necessary expertise, experience and ability to competently complete the described PROJECT(s); and

WHEREAS, PCAPCD staff has carefully reviewed the described PROJECT(s) and have found it/them to be within the requirements of AB 2766, AB 923 and the Offsite Mitigation Program in that the PROJECT(s) are reasonably expected to reduce air pollution and help in the further implementation of the California Clean Air Act and,

WHEREAS, the PCAPCD Board of Directors has approved Resolution #13-06, authorizing the Air Pollution Control Officer to negotiate, sign, and amend as needed, grant agreements and contracts for approved projects listed in the table "PCAPCD Clean Air Projects 2013".

NOW THEREFORE, In consideration of the promises and covenants set forth herein, the parties agree as follows:

1. Contract Period

- a) The term of this contract shall begin on the date signed by both parties and conclude on or before May 31, 2014, unless terminated or amended.
- b) This contract may be canceled by either party upon serving thirty (30) days notice in writing to the other party.

2. Services

- a) CONTRACTOR agrees, during the term of this AGREEMENT, to perform the contracting services set forth below and in Exhibit "A" – Scope of Services (hereinafter "PROJECT").
- b) CONTRACTOR shall be obligated to devote as much time, attention, skill, and effort as may be reasonably required to perform the PROJECT services, in a professional and timely manner, consistent with the elements of the project.

3. Payment

- a) PCAPCD agrees to pay for the services covered by this AGREEMENT pursuant to the payment schedule set forth below and in Exhibit "B"- Contract Terms and Payment for Services Rendered.
- b) The amount paid to the CONTRACTOR shall constitute full payment for all services set forth herein. CONTRACTOR shall not be reimbursed for any additional expenses incurred beyond the maximum approved sum.
- c) CONTRACTOR shall bill PCAPCD upon completion of the project and after all of the conditions for funding outlined in this AGREEMENT are met. If the project funded under this contract is performed in phases or over a period of time, then requests can be made by the CONTRACTOR for partial payment. Partial requests for payments must receive prior authorization by the PCAPCD. CONTRACTOR agrees to provide a detailed invoice to PCAPCD with copies of purchase orders, signed contracts, or receipts referencing the contract number. PCAPCD retains the right to require proof of services performed or costs incurred prior to any payment under this AGREEMENT.
- d) Notwithstanding any other terms of this AGREEMENT, no payments shall be made to CONTRACTOR until PCAPCD is satisfied that work of such value has been rendered pursuant to this AGREEMENT. However, PCAPCD shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

4. **Notices**

- a) Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, sent certified or registered and addressed to the parties as follows:

PCAPCD:
Placer County Air Pollution Control District
Attn: Air Pollution Control Officer
110 Maple Street
Auburn, CA 95603

CONTRACTOR
Bernie Schroeder
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

- b) Any notice so delivered personally shall be deemed to be received on the date of delivery and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

5. **Obligations of PCAPCD**

- a) PCAPCD agrees to pay CONTRACTOR an amount not to exceed the requirements set forth in Exhibit "B" – Contract Terms and payment for Services Rendered, in accordance with the requirements listed in Exhibit "A" – Scope of Services.
- b) PCAPCD shall not reimburse CONTRACTOR for any expenses incurred by CONTRACTOR in the performance of PROJECT described in Exhibit A unless such reimbursement is specifically authorized in the Payment Schedule. CONTRACTOR shall not be reimbursed for any additional expenses incurred beyond the maximum amount.
- c) Except for the payment obligations set forth above, PCAPCD shall have no other obligations or responsibilities to CONTRACTOR under this AGREEMENT.

6. **Obligations of CONTRACTOR**

- a) CONTRACTOR has or will obtain all additional funding set forth in Exhibit B of this AGREEMENT.
- b) CONTRACTOR has or will obtain all required licenses, permits, fees, and other legal authorizations from all applicable Federal, State, and local jurisdictions necessary to commence and properly complete, in a professional manner, the PROJECT described in Exhibit A and will produce said documents if requested by PCAPCD.
- c) Labor, equipment, material, supply costs and other charges will be in conformance with the requirements of Exhibit A.

- d) No component of the monies to be paid by PCAPCD to CONTRACTOR shall be used for grant administration or any interest costs.
- e) CONTRACTOR shall provide proof of PROJECT completion and verification of costs as set forth in Exhibit A and paragraph 3.

7. Hold Harmless/Indemnity

- a) The CONTRACTOR hereby agrees to protect, defend, indemnify, and hold PCAPCD free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PCAPCD arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of PCAPCD) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. CONTRACTOR agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CONTRACTOR. CONTRACTOR also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or PCAPCD or to enlarge in any way the CONTRACTOR'S liability but is intended solely to provide for indemnification of PCAPCD from liability for damages or injuries to third persons or property arising from CONTRACTOR'S performance pursuant to this contract or agreement.
- b) As used above, the term PCAPCD means PCAPCD or its officers, agents, employees, and volunteers.

8. Insurance Requirements

It is recognized that CONTRACTOR is a self insured public agency, and as such provides coverage for General Liability, Errors & Omissions and Worker's Compensation. CONTRACTOR shall maintain said insurance in full force and effect during the term of this contract.

9. Facilities, Equipment and Other Materials

Except as set forth herein CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this AGREEMENT. PCAPCD shall furnish CONTRACTOR only those facilities, equipment, and other materials, and shall perform only those obligations as listed herein.

10. Non-Discrimination

CONTRACTOR shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, sexual preference, or in contravention of any other protected classification or practice identified in the California Fair Employment and Housing Act; Government Code section 12900 et seq.

11. Records and Documents

- a) CONTRACTOR shall maintain at all times complete, detailed records with regard to work performed under this AGREEMENT, in a form acceptable to PCAPCD, and PCAPCD shall have the right to inspect such records at any reasonable time.
- b) CONTRACTOR agrees to return to PCAPCD, upon termination of this AGREEMENT, all documents, drawings, photographs, and other written or graphic material, however produced, received from PCAPCD and used by CONTRACTOR in the performance of its services. All work papers, drawings, internal memoranda, graphics, photographs, and any written or graphic material, however produced, prepared by CONTRACTOR in connection with its performance of services hereunder shall be, and shall remain after termination of this AGREEMENT, the property of PCAPCD and may be used by the PCAPCD for any purpose whatsoever. PCAPCD agrees that any future use of documents produced by the CONTRACTOR under the terms of this contract shall be at the sole discretion of the PCAPCD and CONTRACTOR shall bear no liability for the decisions on whether and how to use such documents.

12. Independent Status

- a) CONTRACTOR shall perform this contract as an independent CONTRACTOR and not as an employee of PCAPCD. CONTRACTOR acknowledges that CONTRACTOR is not entitled to any of the PCAPCD's fringe benefits, including without limitation; paid holidays, life insurance, sick leave, or travel or any other expenses in connection with services performed hereunder. No part of the compensation payable to CONTRACTOR hereunder shall be deducted or withheld for payment of Federal or State income or other employment related taxes. It shall be the responsibility of CONTRACTOR to provide all coverage necessary for CONTRACTOR'S own benefit and not as an employee of PCAPCD.
- b) Except as PCAPCD may specify in writing, CONTRACTOR shall have no authority, express or implied; to act on behalf of PCAPCD in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this AGREEMENT to bind PCAPCD to any obligation whatsoever.

13. Warranties

CONTRACTOR warrants that its services are performed, with the usual thoroughness and competence; in accordance with the standard for professional services at the time those services are rendered.

14. Licenses, Permits, Etc

CONTRACTOR represents and warrants to PCAPCD that it has or will obtain before initiation of the PROJECT, all licenses, permits, qualifications, and approvals of whatever nature, which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to PCAPCD that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this AGREEMENT, any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

15. Assignment or Transfer

CONTRACTOR may assign any of its rights, burdens, duties, or obligations under this AGREEMENT only upon the prior written consent of PCAPCD. Approval will be at the sole discretion of PCAPCD.

16. Modification of Agreement

This AGREEMENT cannot be changed or supplemented orally, and may be modified or superseded only by written instrument executed by all parties.

17. Waiver

One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this AGREEMENT shall not operate as a waiver of any subsequent breach or default.

18. Entirety of AGREEMENT

This AGREEMENT constitutes the entire AGREEMENT and understanding between the parties. There are no oral understandings, terms, or conditions, and no party has relied upon any representation, express or implied, not contained in this AGREEMENT. Any prior understandings, terms, or conditions are deemed merged into this AGREEMENT. This AGREEMENT is intended as the complete and exclusive statement of the parties' Agreement pursuant to Code of Civil Procedure section 1856.

19. Jurisdiction

This AGREEMENT, and the right and obligations of the parties, shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this AGREEMENT, venue shall only be in the appropriate state or federal court having venue over matters arising in Placer County, California, provided that

nothing in this AGREEMENT shall constitute a waiver of immunity to suit by the PCAPCD.

20. Exhibits

All exhibits referred to herein and attached hereto are fully incorporated by this reference.

The parties so agree.

PCAPCD:

Thomas J. Christofk
Air Pollution Control Officer

Date

CONTRACTOR:

Bernie Schroeder
Director of Public Works

Date

EXHIBIT A
SCOPE OF SERVICES

Contract Number: CN000756

CONTRACTOR: City of Auburn

Prior to funding, and prior to the close of the Project Completion End Date, as outlined in Exhibit B, the CONTRACTOR shall:

1. install a minimum of 7 bicycle signs and 7 roadway markings on Lincoln Way, High Street, and Auburn Folsom Road in order to identify bicycle routes and to encourage bicycling as outlined in the CONTRACTOR's 2013 Clean Air Grant Application.
2. after PROJECT completion, provide evidence of signs and roadway markings via photographs.
3. advertise on the City of Auburn's website, where appropriate, and on any other PROJECT related outreach material, that partial funding for the PROJECT was made available by the PCAPCD.

CONTRACTOR shall maintain signs and roadway markings for a minimum of five years.

If for any reason, after PROJECT funding, the equipment/project funded under this contract does not perform according to what was submitted in the 2013 CAG application or if the conditions of this contract are not met, the PCPACD may seek reimbursement of grant funds.

EXHIBIT B

CONTRACT TERMS AND PAYMENT FOR SERVICES RENDERED

Contract Number: CN000756

CONTRACTOR: City of Auburn

Budget:

Amount Awarded by PCAPCD:	\$ 2,500
Co-Funding (including in-kind):	\$ 500
Estimated Total PROJECT Amount:	\$ 3,000

Contract Schedule (to occur on or before the following dates):

Start Date:	when signed by both parties
Project Completion End Date:	May 31, 2014
Contract End Date:	May 31, 2014

Payment:

The PCAPCD will provide up to Two Thousand Five Hundred Dollars (\$2,500) in funding for bicycle route and sign markings in accordance with the requirements listed in this AGREEMENT.

Payment(s) shall be made to the CONTRACTOR within thirty (30) days after the billing is received and approved by the PCAPCD.

Funds will not be available for payment until after July 1, 2013. Invoices submitted for payment prior to this date will be held and paid after that date.

Invoices:

Invoices shall be submitted to the PCAPCD in an original format and include contract number CN000756. Along with submitting an invoice for reimbursement, provide copies of all paid receipts and proof of in-kind support (when applicable) associated with the PROJECT funded under this AGREEMENT.

1 RESOLUTION NO. 13-
2 RESOLUTION AUTHORIZING THE EXECUTION OF THE 2013 CLEAN AIR GRANT
3 CONTRACT.
4 -----

5 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

6 That the City Council of the City of Auburn does hereby authorize the
7 Director of Public Works to sign and execute the 2013 Clean Air Grant Contract
8 No. CN0000456 with the Placer County Air Pollution Control District for the
9 Roadway Markings and Signage for Bicycle Routes Project.

10 A true and correct copy of said 2013 Clean Air Grant Contract is attached
11 hereto as Exhibit "A."

12
13 DATED: May 13, 2013

14 _____
Kevin Hanley, Mayor

15 ATTEST:

16
17 _____
Stephanie L. Snyder, City Clerk

18
19 I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify
20 that the foregoing resolution was duly passed at a regular session meeting of
21 the City Council of the City of Auburn held on the 13th day of May 2013 by
the following vote on roll call:

22 Ayes:

23 Noes:

24 Absent:

25 _____
Stephanie L. Snyder, City Clerk

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